

VICKI A. O'MEARA

Environment and Natural Resources Division

PHILLIP A. BROOKS

Environmental Enforcement Section

United States Department of Justice

301 Howard Street, Suite 870

San Francisco, CA 94105

Telephone: (415) 744-6483

PAUL G. WOLFTEICH

IRYNA A. KWASNY

Environmental Enforcement Section

United States Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, D.C. 20044

Telephone: (202) 514-3482

LOURDES G. BAIRD

United States Attorney

Central District of California

PETER HSIAO

Assistant United States

Federal Building

Room 7516

300 North Los Angeles Street

Los Angeles, California 90012

Telephone: (213) 894-6117

Attorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

United States of America and State of California

Plaintiffs,

Civil Action No. 83-2501 JMI (MX)

v.

[Proposed]Consent Decree

J. B. Stringfellow, et al.,

Defendants.

TABLE OF CONTENTS

I. BACKGROUND	2
II. JURISDICTION	4
III. PARTIES BOUND	4
IV. DEFINITIONS	5
V. GENERAL PROVISIONS	10
VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS	13
VII. ADDITIONAL RESPONSE ACTIONS	15
VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS	18
IX. ACCESS	20
X. REPORTING REQUIREMENTS	22
XI. SUBMISSIONS REQUIRING AGENCY APPROVAL	24
XII. PROJECT COORDINATORS	26
XIII. CERTIFICATION OF COMPLETION	28
XIV. EMERGENCY RESPONSE	29
XV. REIMBURSEMENT OF RESPONSE COSTS	30
XVII. FORCE MAJEURE	46
XVIII. DISPUTE RESOLUTION	49
XIX. STIPULATED PENALTIES	54
XX. COVENANTS NOT TO SUE BY PLAINTIFFS	59
XXI. COVENANTS BY SETTLING DEFENDANTS	63
XXII. EFFECT OF SETTLEMENT	64
XXIII. ACCESS TO INFORMATION	65
XXIV. RETENTION OF RECORDS	67
XXV. NOTICES AND SUBMISSIONS	68

- i -

XXVI. EFFECTIVE DATE	70
XXVII. RETENTION OF JURISDICTION	70
XXVIII. APPENDICES	70
XXIX. COMMUNITY RELATIONS	71
XXX. MODIFICATION	71
XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	71
XXXII. SIGNATORIES/SERVICE	72

- ii -

1. I. BACKGROUND

2. A. The United States of America ("United states"), on
3. behalf of the Administrator of the United States Environmental
4. Protection Agency ("EPA"), and the State of California ("the state")

5. jointly filed a complaint in this matter pursuant to, inter alia,
6. the Comprehensive Environmental Response, Compensation, and
7. Liability Act ("CERCLA"), Sections 106 and 107, 42 U.S.C. §§ 9606
8. and 9607 ("Complaint").
9. B. Pursuant to CERCLA, the Complaint seeks, inter alia:
10. (1) reimbursement of costs incurred by the United States and the
11. State for response actions at the Stringfellow Hazardous Waste
12. Superfund Site in Riverside County, California ("the Site"),
13. together with accrued interest; and (2) performance of studies and
14. response work by the defendants in connection with the Site
15. consistent with the National Contingency Plan, 40 C.F.R. Part 300
16. (as amended) ("NCP").
17. C. In accordance with the NCP and Section 121(f)(1)(F)
18. of CERCLA, 42 U.S.C. 5 9621(f)(1)(F), EPA notified the State of
19. negotiations with the potentially responsible parties regarding the
20. implementation of certain interim remedial design and remedial
21. actions for the Site. EPA provided the State with an opportunity to
22. participate in these negotiations and to be a party to this Consent
23. Decree.
24. D. Pursuant to Section 105 of CERCLA, 42 U.S.C. 9605,
25. EPA placed the Site on the National Priorities List, set forth at 40

- 2 -

1. C.F.R. Part 300, Appendix B, by publication in the Federal Register
2. on September 8, 1983.
3. E. In response to a release or a substantial threat of a
4. release of hazardous substances at or from the Site, EPA and the
5. State conducted a "Fast Track" and a "Full Scale" Remedial
6. Investigation and Feasibility Study ("RI/FS") for the Site. EPA has
7. issued four Records of Decision ("ROD") selecting response work for
8. the Site- Pursuant to Section 117 of CERCLA, 42 U.S.C. 9617, EPA
9. and the State jointly published proposed plans for remedial action
10. in June 1988 and in March 1989. EPA provided an opportunity for
11. written and oral comments from the public on the proposed plans.
12. F. In its fourth ROD, executed on September 30, 1990
13. ("1990 ROD"), EPA selected additional response actions outlined in
14. the June 1988 and March 1989 proposed plans. See Appendix B (1990
15. ROD). Initial performance of remedial action selected in the 1990
16. ROD is a primary objective of this Consent Decree.
17. G. Based on the information presently available to them,
18. EPA and the State believe that the Work under this Consent Decree
19. will be properly and promptly conducted by the Settling Defendants

20. if conducted in accordance with the requirements of this Consent
21. Decree and its appendices.
22. H. The remedial action selected by the 1990 ROD and the
23. work to be performed by the Settling Defendants shall constitute a
24. response action taken or ordered by the President.
25. J. The Parties recognize, and the Court by entering this
26. Consent Decree finds, that this Consent Decree has been negotiated

- 3 -

1. by the Parties in good faith and implementation of this Consent
2. Decree will expedite the cleanup of the Site and will avoid
3. prolonged and complicated litigation between the Parties, and that
4. this Consent Decree is fair, reasonable, and in the public interest.
5. K. By entering into this Consent Decree, Settling
6. Defendants do not make any admission of law or fact other than those
7. contained in Paragraphs 7, 44, 45, and 46 below.
8. NOW, THEREFORE, it is hereby Ordered, Adjudged, and
9. Decreed:

10. II. JURISDICTION

11. 1. This Court has jurisdiction over the subject matter of |
12. this action pursuant to 28 U.S.C. ~ 1331 and 1345, and 42 U.S.C.
13. 9606, 9607, and 9613(b). This Court also h~s personal
14. jurisdiction over the Settling Defendants. Solely for the purpo~es
15. of this Consent Decree and the underlying Complaint, Settling
16. Defendants waive all objections and defenses that they may have to
17. jurisdiction of the Court or to venue in this District. Settling
18. Defendants shall not challenge the terms of this Consent Decree, if
19. entered by the Court, or this Court's jurisdiction to enter and
20. enforce this Consen~ Decree.

21. III. PARTIES BOUND

22. 2. This Consent Decree applies to and is binding upon the
23. United States and the State and upon Settling Defendants and their
24. heirs, successors and assigns. Any change in ownership or corporate
25. status of a Settling Defendant including, but not limited to, any
26. transfer of assets or real or personal property shall in no way

- 4 -

1. alter such Settling Defendant's responsibilities under this Consent
2. Decree.
3. 3. Settling Defendants shall provide a copy of this

4. Consent Decree to each contractor hired to perform the Work (as
5. defined below) required by this Consent Decree and to each person
6. representing any Settling Defendant with respect to the Site or the
7. Work, and shall condition all contracts entered into hereunder upon
8. performance of the Work in conformity with the terms of this Consent
9. Decree. Settling Defendants or their contractors shall provide
10. written notice of the Consent Decree to all subcontractors hired to
11. perform any portion of the Work required by this Consent Decree.
12. Settling Defendants shall nonetheless be responsible for ensuring
13. that their contractors and subcontractors perform the Work
14. contemplated herein in accordance with this Consent Decree. With
15. regard to the activities undertaken pursuant to this Consent Decree,
16. each contractor and subcontractor shall be deemed to be in a
17. contractual relationship with the Settling Defendants within the
18. meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. 9607(b)(3).

19. IV. DEFINITIONS

20. 4. Unless otherwise expressly provided herein, terms used
21. in this Consent Decree which are defined in CERCLA, RCRA, or in
22. regulations promulgated thereunder shall have the meaning assigned
23. to them therein. For terms used in this Consent Decree or in the
24. attached appendices, which are incorporated into this Consent
25. Decree, the following definitions shall apply. For convenience of
26. reference, definitions of certain terms are repeated in the

- 5 -

1. Statement of Work at Appendix A, which is attached hereto and
2. incorporated herein by reference.
3. The 'Administrative Order on Consent' or 'AOC' shall mean
4. the Administrative Order on Consent, No. 88-17, executed by the
5. Director, Toxic and Waste Management Division, EPA Region IX on
6. May 27, 1988, and all amendments and attachments thereto.
7. "CERCLA" shall mean the Comprehensive Environmental
8. Response, Compensation, and Liability Act of 1980, as amended,
9. 42 U.S.C. § 9601 et seq.
10. "Consent Decree" shall mean this Decree and all appendices
11. attached hereto (listed in Section XXVIII). In the event of
12. conflict between this Decree and any appendix, this Decree shall
13. control.
14. "Day" shall mean a calendar day unless expressly stated to
15. be a working day. 'Working day' shall mean a day other than a
16. Saturday, Sunday, or Federal holiday. In computing any period of
17. time under this Consent Decree, where the last day would fall on a

18. Saturday, Sunday, or Federal holiday, the period shall run until the
19. close of business of the next working day.
20. Deliverable' shall mean all submission~ required of the
21. Settling Defendants under Section 4.0 of the Statement of Work.
22. "DTSC" shall mean the Department of Toxic Substances
23. control within the California Environmental Protection Agency
24. (formerly the State Department of Health Services) and any successor
25. departments or agencies of the State.

- 6 -

1. "Element of Work" shall mean a portion of the Work that is
2. designated as a separate project in the Statement of Work, i.e.,
3. Zone 1 Dewatering System, Community Extraction System, Routine
4. Groundwater Monitoring, Routine Site Maintenance, and Community
5. Relations Support. Each Element of Work may have multiple
6. components-
7. "EPA" shall mean the United States Environmental
8. Protection Agency and any successor departments or agencies of the
9. United States.
10. The "Fifth Amendment to the Administrative Order on
11. Consent" or "Fifth Amendment to the AOC" shall mean the amendment to
12. the Administrative Order on Consent executed by the Director,
13. Hazardous Waste Management Division, EPA Region IX, on July 25,
14. 1990, and all attachments thereto.
15. "Future Response Costs" shall mean all response costs
16. incurred by the United States or the State in connection with the
17. Site that were incurred on or after the date of lodging of this
18. Consent Decree.
19. "National Contingency Plan" or "NCP" shall mean the
20. National Oil and Hazardous Substances Pollution Contingency Plan
21. promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605,
22. codified at 40 C.F.R. Part 300, including, but not limited to, any
23. amendments thereto.
24. "Oversight" shall mean those activities undertaken by the
25. United States, the State, and their contractors in connection with

- 7 -

1. the monitoring, review, and supervision Or any activities undertaken
2. by Settling Defendants pursuant to this Consent Decree.
3. "Paragraph" shall mean a portion of this Consent Decree

4. identified by an arabic numeral.
5. "Parties" shall mean the signatories to this Consent
6. Decree.
7. "Past Response Costs" shall mean all response costs that
8. the United States or the State incurred in connection with the Site
9. prior to the date this Consent Decree was lodged.
10. "Performance Standard" shall mean those specific
11. requirements to be achieved by the Settling Defendants in
12. implementing the Elements of Work outlined in Section 1.1.3 of the
13. Statement of Work. The Performance Standards are specified in
14. Sections 2.3.1.4, 2.3.4.4, and 2.4.1.4 of the Statement of Work.
15. "Plaintiffs" shall mean the United States and the State of
16. California.
17. "RCRA" shall mean the Solid Waste Disposal Act, as
18. amended, 42 U.S.C. 6901 et seq. (also known as the Resource
19. Conservation and Recovery Act).
20. "Record of Decision" or "ROD" shall mean a written
21. decision document that constitutes agency action by EPA in the
22. selection, or concurrence in the selection, of remedial action for
23. the Site.
24. The "1990 Record of Decision" or "1990 ROD" shall mean the
25. EPA Record of Decision relating to the Site executed on
26. September 30, 1990, by the Regional Administrator, EPA Region IX,

– 8 –

1. and all attachments thereto. The 1990 ROD is attached as Appendix B
2. to this Consent Decree.
3. "Residuals" shall mean any solid waste, sludge, residue,
4. contaminated media, or other by-product of the treatment, storage,
5. or disposal of any water generated in the performance of the Work.
6. This term also includes contaminated materials produced by any
7. excavation, drilling, or soil dislocation resulting from performance
8. of the Work.
9. "Response Cost" shall mean any direct or indirect cost
10. incurred in connection with the Site that any Party is entitled to
11. recover under Section 107 of CERCLA, 42 U.S.C. ~ 107, or any
12. analogous provision of State law.
13. "Section" shall mean a portion of this Consent Decree
14. identified by a roman numeral.
15. "Settling Defendants" shall mean: Alumax, Inc.; the
16. Deutsch Company; General Electric Co.; McDonnell Douglas
17. corporation; Montrose Chemical Corporation of California:

18. NI Industries: Northrop Corporation; Quantum Chemical Corporation
19. (formerly National Distillers ~ Chemical Corporation); Quemetco
20. Inc.: Rheem Manufacturing Co.; Rockwell International Corporation;
21. Rohr Industries; Stauffer Chemical Company; J.B. Stringfellow, Jr.;
22. Stringfellow Quarry Company; Stringfellow Quarry Company, Inc.; and
23. Weyerhaeuser, Inc.
24. "Site" shall mean the Stringfellow Hazardous Waste
25. Superfund Site in Riverside County, California depicted generally on
26. the map attached to the 1990 ROD.

- 9 -

1. "State" shall mean the State of California.
2. "Statement of Work" or "SOW" shall mean the document
3. appended to and incorporated into this Consent Decree detailing the
4. requirements for performance of the Work and any modifications to
5. the SOW made in accordance with this Consent Decree. The SOW is
6. attached as Appendix A to this Consent Decree.
7. "United States" shall mean the United States of America.
8. "Waste Material" shall mean (1) any "hazardous substance"
9. under Section 101(14) of CERCLA, 42 U.S.C. 9601(14); (2) any
10. pollutant or contaminant under Section 101(33), 42 U.S.C.
11. 9601(33); (3) any 'solid waste~ under Section 1004(27) of RCRA, 42
12. U.S.C. 6903(27); and (4) any ~hazardous material' under California
13. Health and Safety Code Section 25501(k).
14. "Work" shall mean all activities necessary to perform the
15. following Elements of Work: Zone I Dewatering System, Community
16. Extraction System, Routine Groundwater Monitoring, Routine Site
17. Maintenance, and Community Relations Support.

18. V. GENERAL PROVISIONS

19. 5. The objectives of the Parties in entering into this
20. Consent Decree are (a) to protect public health and welfare and the
21. environment at the Site by continuing previously initiated response
22. activities; designing, constructing, and implementing certain
23. response actions selected in the 1990 ROD; and performing routine
24. Site maintenance and community relations support activities; and (b)
25. to provide a mechanism for resolution of certain cost recovery
26. claims raised by the Complaint. While this Consent Decree does not

- 10 -

1. effect any release for any claims brought by the United States or

2. the State in the Complaint, it does resolve significant cost
3. recovery issues and ensures that the Settling Defendants will
4. perform significant response action at the Site.
5. 6. Settling Defendants acknowledge that the United States
6. and the State intend to seek to require Settling Defendants to
7. perform response actions in addition to those embodied in this
8. Consent Decree. Settling Defendants may oppose such efforts of the
9. United States and the State.
10. 7. Settling Defendants agree that the 1990 ROD is
11. consistent with the NCP and waive any right to raise any challenge
12. to the 1990 ROD in this or any other action.

13. 8. Commitments by Settling Defendants.

14. a. Settling Defendant~ shall finance and perform the
15. Work in accordance with this Consent Decree and all plans,
16. standards, specifications, and schedules set forth in or approved by
17. EPA pursuant to this Consent Decree. Settling Defendants shall also
18. reimburse the United States for Past Response Costs and Future
19. Response Costs as provided in this Consent Decree.
20. b. The obligations of Settling Defendant~ to finance
21. and perform the Work and to pay amounts owed the United States under
22. this Consent Decree are joint and several. In the event of the
23. insolvency of one or more Settling Defendants or other failure of
24. any one or more Settling Defendants to implement the requirements of
25. this Consent Decree, the remaining Settling Defendants shall
26. complete all such requirements.

- 11 -

1. 9. Compliance With Applicable Law.

2. All activities undertaken by Settling Defendants pursuant
3. to this Consent Decree shall be performed in accordance with all
4. applicable, or relevant and appropriate, requirements of federal and
5. state environmental laws. The activities conducted pursuant to this
6. Consent Decree, if approved by EPA, shall be considered to be
7. consistent with the NCP. As specified herein, EPA will consult with
8. DTSC prior to approving activities by the Settling Defendants under
9. this Consent Decree.

10. 10. Permits.

11. a. As provided in Section 121(e) of CERCLA and
12. 300.5 of the NCP, no permit shall be required for any portion of
13. the Work conducted entirely on-site. Where any portion of the Work
14. requires a federal, state, or local permit or authorization,
15. Settling Defendants shall submit timely and complete applications

16. and take all other actions necessary to obtain all such permits or
 17. authorization.⁵
 18. b. The Settling Defendants may seek relief under the
 19. provisions of Section XVII (Force Majeure) of this Consent Decree
 20. for any delay in the performance of the Work resulting from a
 21. failure to obtain, or a delay in obtaining, any such permit or
 22. authorization required for the Work.
 23. c. This Consent Decree is not, and shall not be
 24. construed to be, a permit issued pursuant to any federal or state
 25. statute or regulation.

-12-

1. VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

2. 11. Remedial Design and Remedial Action.

3. a. All Work under this Consent Decree is subject to
 4. approval by EPA. EPA will, in accordance with the Statement of
 5. Work, consult with DrSC before tl) responding to Settling Defendants
 6. with comments on or approvals of all deliverables (or proposed
 7. amendments to deliverables), (2) approving the Work, or
 8. (3) certifying completion of the Work under this Consent Decree
 9. pursuant to Section XIII. DrSC shall provide to EPA, in a timely
 10. manner, its written comments on all deliverables (or proposed
 11. amendments to deliverables) submitted to EPA by Settling Defendants
 12. and on all requests for approval of Work and requests for
 13. Certification of Completion of Work.
 14. b. Settling Defendants shall, in accordance with the
 15. Statement of Work, prepare and submit a Work Plan for approval by
 16. EPA pursuant to Section XI (Submissions Requiring Agency Approval).
 17. Once the Work Plan, and as required by the Statement of Work, the
 18. Health and Safety Plan, the Quality Assurance Project Plan, the
 19. Sampling Plan, or other plan~, designs and reports, are approved by
 20. EPA (after seeking review and comment by DTSC), Settling Defendants
 21. shall implement the Work Plan.
 22. c. Settling Defendants shall submit deliverables
 23. required under the Statement of Work in accordance with the
 24. schedules set forth and referred to therein. Once the deliverables
 25. are approved pursuant to Section XI (Submissions Requiring Agency

- 13 -

1. Approval), they shall be incorporated into And, where applicable, be

2. enforceable under this Consent Decree.
3. 12. The Work performed by the Settling Defendants
4. pursuant to this Consent Decree shall include the obligation to
5. achieve the Performance Standards set forth in Section 2.3.1.4,
6. 2.3.4.4, and 2.4.1.4 of the Statement of Work.
7. 13. Settling Defendants acknowledge and agree that
8. nothing in this Consent Decree, the Statement of Work, or the
9. approval of deliverables constitutes a warranty or representation of
10. any kind by Plaintiffs that compliance with the requirement~ set
11. forth in the Statement of Work or any deliverable will achieve the
12. Performance Standards or ~atisfy other requirement~ or obligations
13. undertaken by Settling Defendants in the Statement of Work.
14. 14. Settling Defendants shall, prior to any shipment of
15. Waste Material from the Site to either an in-state or out-of-state
16. waste management facility, provide written notific~tion to the
17. appropriate state environmental official in the receiving facility's
18. state and to the EPA Project Coordinator and the DTSC Project
19. Coordinator of such shipment of Waste Material. However, this
20. notification requirement shall not apply to any off-site shipments
21. when the total volume of all such shipments will not exceed 10 cubic
22. yards. Any off-site disposal of Waste Material must be in
23. accordance with EPA~s Off-Site Disposal Policy and applicable state
24. law.
25. a. The Settling Defendants shall include in the
26. written notification the following information, where available:

- 14 -

1. (1) the name and location of the facility to which the Waste
2. Material is to be shipped; (2) the type and quantity of the Waste
3. Material to be shipped; (3) the expected schedule for the shipment
4. of the Waste Material; and (4) the method of transportation. The
5. Settling Defendants shall notify the state in which the planned
6. receiving facility is located of major changes in the shipment plan,
7. such as a decision to ship the Waste Material to another facility
8. within the same state, or to a facility in another state.
9. b. The identity of the receiving facility and state
10. will be determined by the Settling Defendants following the award of
11. any contract for implementation of any Element of Work that will
12. involve off-site disposal. The Settling Defendants shall provide
13. the information required by Paragraph 14.a a~oon as practicable
14. after the award of the contract and befor~ the Waste Material is
15. actually shipped.

16. VII. ADDITIONAL RESPONSE ACTIONS

17. 15. In the event that EPA (after consultation with DTSC),
18. determines based upon the available data, that additional response
19. actions are necessary to: (a) meet the Performance Standards
20. identified in the Statement of Work; (b) re-establish compliance
21. with a Performance Standard identified in the Statement of Work
22. subsequent to EPA's written acceptance of Settling Defendants'
23. Achievement of Performance Standard Reports; or (c) satisfy any
24. requirements or obligations undertaken by Settling Defendants in the
25. Statement of Work, EPA shall notify the Settling Defendants' Project
26. Coordinator of the need to perform such additional response actions.

- 15 -

1. In order for Settling Defendants to be required to perform
2. additional response actions, EPA must notify the Settling Defendants
3. of the demand for additional response actions at least sixty (60)
4. days before the time established in the Statement of Work for the
5. termination of the Settling Defendants' obligation to perform under
6. the Element of Work for which additional response actions are
7. demanded. For the purposes of this Paragraph, the obligation to
8. perform under any particular Element of Work terminates on the last
9. day of the Period of Operation, or time specified for conducting an
10. activity specified in the Statement of Work, for that Element of
11. Work. Subject to the foregoing, the Settling Defendants may propose
12. to EPA that additional response actions are necessary.
13. 16. Within sixty (60) days of receipt of notice from EPA
14. that additional response actions are necessary (or such longer time
15. as may be specified by EPA), Settling Defendants shall submit for
16. approval by EPA pursuant to Section XI (Submissions Requiring Agency
17. Approval), a plan or plans for the implementation of the additional
18. response actions. EPA (after seeking review and comment by DTSC)
19. may require submissions of additional plans relating to the
20. implementation of the additional response actions, including, but
21. not limited to a Health and Safety Plan, a Quality Assurance Project
22. Plan, or a Sampling Plan. The plan or plans shall conform to the
23. applicable requirements of Paragraph II.b. and c. Upon approval of
24. the plan(s) by EPA (after seeking review and comment by DTSC),
25. Settling Defendants shall implement the plan(s) for additional
26. response actions in accordance with the provisions and schedules

- 16 -

1. contained therein. In the case of additional response actions
2. required for the Lowered Water Table Component of the Zone 1
3. Dewatering System only, Settling Defendants' obligation to design
4. and install any additional extraction wells will not increase the
5. length of time they are otherwise required to operate and maintain
6. that system under Section 2.3.5 of the Statement of Work, except as
7. may be necessary to demonstrate that any new extraction wells
8. conform to the plan for the additional response actions.
9. 17. Any additional response actions that Settling
10. Defendants propose are necessary to meet the Performance Standards,
11. re-establish compliance with a Performance Standard, or satisfy any
12. other requirement or obligation undertaken by Settling Defendants in
13. the Statement of Work shall be subject to approval by EPA pursuant
14. to Section XI (Submission Requiring Agency Approval) and, if
15. approved by EPA (after seeking review and comment by DTSC), shall be
16. completed by Settling Defendants in accordance with approved plans,
17. specification, and schedule.
18. 18. Settling Defendant may invoke the procedures set
19. forth in Section XVII (Dispute Resolution) to dispute EPA's
20. determination that additional response actions are necessary to meet
21. Performance Standard, re-establish Performance Standards, or to
22. satisfy any other requirement or obligations undertaken by Settling
23. Defendants in the Statement of Work. Such a dispute shall be
24. resolved pursuant to Paragraph 66 through 71 of this Consent
25. Decree.

- 17 -

1. VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

2. 19. Settling Defendants shall use quality assurance,
3. quality control, and chain of custody procedures for all samples in
4. accordance with the guidelines identified in Section 3.4 of the
5. Statement of Work, and subsequent amendments to such guidelines upon
6. notification by EPA to Settling Defendants of such amendments.
7. Amended guidelines shall apply only to procedures conducted after
8. such notification. Prior to the commencement of any sampling,
9. analyzing, or monitoring project under this Consent Decree and in
10. accordance with the schedule in the Statement of Work, Settling
11. Defendants shall submit for EPA's approval (after seeking review and
12. comment by DTSC) a Quality Assurance Project Plan (QAPP) that is
13. consistent with the Statement of Work, the NCP, and applicable
14. guidance documents. If relevant to the proceeding, the Parties
15. agree that validated sampling data generated in accordance with the

16. QAPP(s) and reviewed and approved by EPA shall be admissible as
17. evidence, without objection, in any proceeding under this Decree.
18. Settling Defendants shall ensure that EPA and DTSC personnel and
19. their authorized representatives are allowed access at reasonable
20. times to all laboratories utilized by Settling Defendants in
21. implementing this Consent Decree. In addition, Settling Defendants
22. shall ensure that such laboratories shall analyze all samples
23. submitted in connection with the Work pursuant to the approved QAPP
24. for quality assurance monitoring. Settling Defendants shall ensure
25. that the laboratories they utilize for the analysis of samples taken
26. pursuant to this Consent Decree perform all analyses according to

- 18 -

1. accepted EPA methods. Accepted EPA methods consist of those methods
2. which are documented in the ~Contract Lab Program Statement of Work
3. for Inorganic Analysis~ and the ~Contract Lab Program Statement of
4. Work for Organic Analysis,~ dated February 1988, and any amendments
5. made thereto during the course of the implementation of this Decree.
6. Settling Defendants shall ensure that all laboratories they use for
7. analysis of samples taken pursuant to this Consent Decree
8. participate in an EPA or EPA-equivalent QA/QC program.
9. 20. Upon request, the Settling Defendants shall allow
10. split or duplicate samples to be taken by EPA and DTSC or their
11. authorized representatives. Settling Defendants shall notify EPA
12. and DTSC not less than 28 days in advance of any sample collection
13. activity unless shorter notice is agreed to by EPA. In addition,
14. EPA and DTSC shall have the right to take any additional sample
15. that EPA or DTSC deem necessary. Upon request, EPA and DTSC shall
16. allow the Settling Defendants to take split or duplicate samples of
17. any samples taken as part of EPA's or DTSC's oversight of the
18. Settling Defendant's performance of the Work.
19. 21. Unless specified otherwise in an approved deliverable
20. under the Statement of Work, Settling Defendants shall submit to EPA
21. and DTSC two (2) copies each of the results of all sampling and/or
22. tests or other data obtained or generated by or on behalf of
23. Settling Defendants with respect to the Site and/or the
24. implementation of this Consent Decree. EPA and DTSC shall, upon
25. written request, provide to Settling Defendants copies of their

- 19 -

1. results from any split or duplicate samples taken pursuant to
2. Paragraph 20.
3. 22. Notwithstanding any provision of this Consent Decree,
4. the United States and the State hereby retain all of their
5. information gathering and inspection authorities and rights,
6. including enforcement actions related thereto, under CERCLA, RCRA
7. and any other applicable statutes or regulations.

8. IX. ACCESS

9. 23. a. Commencing upon the date of lodging of this
10. Consent Decree, the Settling Defendants agree to provide the United
11. States, DTSC, and their representatives, including EPA, DTSC, and
12. their contractors, access at all reasonable times to any property
13. not owned by the State to which access is required for the
14. implementation of this Consent Decree, including, but not limited
15. to, access for the following activities:
16. i. Monitoring the Work;
17. ii. Verifying any data or information submitted to
18. the United States or the State;
19. iii. Conducting investigations relating to
20. contamination at or near the Site;
21. iv. Obtaining samples;
22. v. Assessing the need for, planning, or
23. implementing additional response actions at or near the Site;
24. vi. Inspecting or copying records, operating logs,
25. contracts~ or other documents maintained or generated by Settling
26. Defendants or their agents, consistent with Section XXIV;

- 20 -

1. vii. Assessing Settling Defendants' compliance with
2. this Consent Decree.
3. b. To the extent that access to any property is
4. required for the implementation of this Consent Decree and such
5. property is owned or controlled by persons other than Settling
6. Defendants, Settling Defendants shall use best efforts to secure
7. from such persons access for Settling Defendants, as well as for the
8. United States and the State and their representatives, including,
9. but not limited to, their contractors, as necessary to effectuate
10. this Consent Decree. For purposes of this Paragraph, ~best efforts~
11. includes the payments of reasonable sums of money in consideration
12. of access. If any access required to complete the Work is not
13. obtained within forty five (45) days of the date of lodging of this
14. consent Decree, or within forty five (45) days of the date EPA

15. notifies the Settling Defendants in writing that additional access
16. beyond that previously secured is necessary, Settling Defendants
17. shall promptly notify, in writing, EPA and DTSC, and shall include
18. in that notification a summary of the steps Settling Defendants have
19. taken to attempt to obtain access. The United States or the State
20. may, as it deems appropriate, assist Settling Defendants in
21. obtaining access. Settling Defendants shall reimburse the United
22. States in accordance with the procedures in Section XV
23. (Reimbursement of Response Costs), for all costs incurred by the
24. United States in obtaining access. Pursuant to Paragraph 84, the
25. State reserves its rights to seek reimbursement for such costs, and
26. Settling Defendants reserve their rights to oppose such